

Equitable estoppel
11 U.S.C. § 522(f)

In re Casper, Case No. 300-30389
Appellate No. 01-35748

02/28/2003 9th Cir., reversing BAP, Unpublished
which had affirmed ELP

The Ninth Circuit reversed the BAP, which had affirmed Judge Perris's determination that debtor was estopped in her motion to avoid a judicial lien from claiming a value for her property as of the petition date that was less than the amount she had represented to judgment creditor that it was worth.

The Circuit held that equitable estoppel can apply to a statement of belief as to the value of property. It reversed the bankruptcy court's application of equitable estoppel, because the bankruptcy court had failed to find whether debtor knew when she represented that the property was worth \$110,000 that it was actually worth less, and whether the actual value of the property as of the date of the representation was sufficient to cover creditor's lien without impairing debtor's homestead exemption. The Circuit remanded for the bankruptcy court to make those findings.

The BAP decision is found at P01-5(8).

P03-10(6)

FILED

FEB 28 2003

CATHY A. CATTERSON, CLERK
U. S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BEVERLY CASPER,
Appellant,

v.

PAUL CADD; MICHAEL BATLAN,
Appellees.

No. 01-35748

BAP No. OR 00-1581-BKRy

MEMORANDUM*

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Klein, Brandt, and Ryan, Bankruptcy Judges, Presiding

Submitted February 7, 2003**
Seattle, Washington

Before: KLEINFELD and McKEOWN, Circuit Judges, and BREYER,
District Judge.***

Creditor-appellee Paul Cadd had judgment liens on a residence and a rental

*This disposition is not appropriate for publication and may not be cited to
or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

**This panel unanimously finds this case suitable for decision without oral
argument. See Fed. R. App. P. 34(a)(2).

*** Honorable Charles R. Breyer, United States District Judge for the
Northern District of California, sitting by designation.

house owned by debtor-appellant Beverly Casper. In December 1999, debtor's attorney negotiated a deal with creditor's attorney whereby creditor would release his lien on the rental house in exchange for partial payment of the debtor's liability out of the proceeds from the sale of the rental house. Before consenting to this deal, creditor's attorney obtained a letter from debtor's counsel indicating that the tax-assessed value of debtor's residence was \$90,700, that debtor believed the residence had a market value of \$110,000, and that based on this market value and the balance of debtor's mortgage, debtor had equity in the residence that exceeded Oregon's \$25,000 homestead exemption by \$13,000. Five weeks later, debtor declared bankruptcy. She then sought to avoid creditor's lien on her residence on the grounds that the residence was worth only \$90,290, such that the lien impaired her homestead exemption in violation of Oregon law. The bankruptcy court found that debtor was estopped by her previous representation to assert a residence value less than \$110,000, and thus denied debtor's motion for lien avoidance. The Bankruptcy Appellate Panel ("BAP") affirmed.

We have jurisdiction over debtor's appeal under 28 U.S.C. § 158(b)(2). We review the BAP's conclusions of law de novo. See In re Cool Fuel, Inc., 210 F.3d 999, 1001 (9th Cir. 2000).

We reject debtor's contention that she cannot be equitably estopped by the letter sent by her counsel to creditor's counsel because it stated that she *believed*

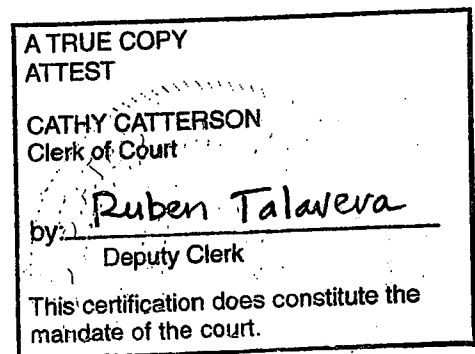
her home to be worth \$110,000. Every estimate of market value is to some extent a "belief." So long as it is reasonable for another to rely upon the estimate, the fact that it is framed as a "belief" does not neutralize its potential estoppel effect. See First Nat'l Bank of Portland v. Dudley, 231 F.2d 396, 401 (9th Cir. 1956) (noting that "equitable estoppel . . . stands for the basic precepts of common honesty, ordinary fairness, and good conscience in dealing with the rights of those whose conduct has been prompted by reasonable good-faith reliance upon the knowing acts or omissions of another").

In order for equitable estoppel to apply, however, the party to be estopped must have known that the true facts were other than as she represented them to be. See Bolt v. United States, 944 F.2d 603, 609 (9th Cir. 1991). In the context of this case, therefore, debtor could be equitably estopped only if she knew on December 15, 1999 that the value of her home was insufficient to cover creditor's lien without impairing her exemption. Since we cannot conclude on the basis of the record before us that this element of equitable estoppel was satisfied, we will remand the case for further factfinding. On remand, the bankruptcy court should consider evidence and enter a finding as to whether the value of debtor's residence on December 15, 1999 was sufficient to cover creditor's lien without impairing debtor's homestead exemption. If the court finds that the value was not sufficient, the court should then determine whether debtor was aware of the insufficiency. If

the value of the residence was in fact sufficient to cover the lien without impairing the exemption, or if the value was in fact insufficient but debtor believed it was sufficient, equitable estoppel will not apply.

We reject debtor's argument that her application for lien avoidance cannot be denied on equitable estoppel grounds because the effect would be to impair her homestead exemption under Oregon law. Application of equitable estoppel to hold a debtor to a prior representation does not conflict with the Oregon statutory code or the bankruptcy rules.

REVERSED and REMANDED.



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U.S. COURT OF APPEALS

Casper v. Cadd, 01-35748

KLEINFELD, Circuit Judge, dissenting:

I respectfully dissent, and would affirm the Bankruptcy Appellate Panel for the reasons it stated.

Ordinarily, equitable estoppel only applies to prevent individuals with actual factual knowledge from changing a previously made representation. However, individuals deemed to have special knowledge may be equitably estopped where they should have known their representations were false.¹ Casper was a real estate agent with experience in the local real estate market in question. To induce Cadd to drop his lien against another property, Casper represented that her residence was valued at \$110,000. Casper's special experience gave Cadd every reason to believe her reasoned valuation, so he dropped his lien. His lawyer, Linkhous, even cited Casper's special knowledge.

Because of Casper's experience in real estate and knowledge of the local market, it is entirely appropriate that Casper now be equitably estopped from changing her representation. This is one of those rare instances where the person make a representation had enough knowledge and experience for the special knowledge exception to apply. As the Bankruptcy Appellate Panel noted, remand

¹ See Gilbert v. City of Martinez, 313 P.2d 139, 141 (Cal. App. 1957); see also 28 Am. Jur. 2d, Estoppel and Waiver §§ 45, 51.

is unnecessary, under the circumstances, to establish Casper's knowledge because the evidence showed that Casper knew the material facts were other than as she represented.